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Environmental
Victories

Spring 2005

Green Fire Report

A publication of the New Mexico Environmental Law Center, a non-profit, public-interest law firm dedicated to protecting New Mexico's environment and communities

Roundhouse or Madhouse?

2005 New Mexico State Legislative Session Review

Report by Earl James and Douglas Meiklejohn

"IN THE 17 YEARS THAT I'VE WITNESSED LEGISLATIVE SESSIONS, I'VE NEVER SEEN LEGISLATORS SO ANTAGONISTIC TOWARDS NEW MEXICO'S ENVIRONMENT AND COMMUNITIES."

— DOUG MEIKLEJOHN



The 2005 legislative session may go down on record as one of the most anti-environmental sessions ever. Many bills were introduced for industry that illustrated the power of uniting greed and anti-government ideology, and would devastate large swaths of New Mexico's environment if they had passed.

Perhaps the most seriously anti-environmental bills of the entire session were **Senate Bill 583**, carried by Senator Stuart Ingle (R-Portales) and the identical **House Bill 711**, sponsored by Representative Jose Campos (D-Santa Rosa). Each of these bills would have prohibited the New Mexico Water Quality Control Commission from protecting surface waters not within the federal definition of "waters of the United States" and from adopting or enforcing standards and regulations for surface water that are more stringent than those required by federal law. Supported by the rapidly growing commercial dairy industry and the New Mexico Homebuilders Association, these bills drew more fire from conservationists of all stripes than any others introduced in this session. They were extremely dangerous bills in light of the Bush Administration's rollbacks of federal regulations and definitions of what categories of surface water will be regulated at all by the federal government. In an ideological shift that should have been embarrassing, conservative Republicans abandoned their 'state's rights' mantra and championed the federal government as their savior.

If either of these bills had passed, between 20% and 40% of New Mexico's surface water would have been

completely unprotected and vulnerable to pollution from any and all sources.

Fortunately, each of these bills died. SB 583 was killed in the Senate Judiciary Committee after intense lobbying by the Law Center and dozens of other organizations. House Bill 711 was also the subject of intense lobbying, and it died its own well-deserved death in the House Judiciary Committee.

On the flip side, numerous bills introduced by environmental interests met similar fates due to opposition by commercial and industrial interests, and a few good bills actually made it through the legislative meat grinder and are on their way to the Governor's desk. The casualties included:

HB 722 and SB 710 - Healthy Communities Act - would have given strong protection from further pollution to communities that already have more polluting facilities than they can count;

HB 1004 - Air Quality Control Act Requirements - and **SB 668 -Stringency of Hazardous Waste Act Rules** - would have stripped the 'no more stringent than federal standards' language out of both the NM Air Quality and Hazardous Waste Acts, thereby allowing NM to decide how much protection to afford communities and the environment rather than having to follow the Bush Administration's environmental rollbacks. NM business and industry interests would have none of that, and their mouthpieces in the Roundhouse killed both bills.

On the very short list of winner's is the **Strategic Water Reserve Act** which will provide a dedicated

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SOUTHWEST LANDFILL EXPANSION THWARTED

The Law Center won its lawsuit against Southwest Landfill, a construction-debris landfill seeking to expand in the South Valley of Albuquerque. We represent the South Valley Coalition of Neighborhood Associations, the SouthWest Organizing Project, and several individuals who have fought this expansion for nearly a decade. Our clients are concerned that an expansion would contaminate groundwater and threaten the safety of local residents, and that the landfill's existence in the South Valley is representative of the tremendous environmental injustice perpetrated on the residents of the South Valley, the majority of whom are Hispanic.

In 2003, the Bernalillo County Commissioners granted the landfill a permit to expand from 80 acres to 140 acres. They did this in spite of county regulations prohibiting the expansion of private landfills in "groundwater crucial areas" (areas containing current or potential drinking water supplies), and with flagrant disregard to the decisions against the expansion that were issued by County staff and the Bernalillo County Extraterritorial Land Use Commission.

The Law Center appealed in December 2003. Judge Linda Vanzi of the Second District Court of New Mexico agreed with our argument that the permit violates crucial area regulations, and **ordered the permit revoked**. Southwest Landfill has appealed, and we will head back to court this spring to defend our victory.

MAJOR VICTORIES IN PICURIS PUEBLO MICA CASE

In February, 2004, the Law Center and our co-counsel filed an aboriginal title claim on behalf of Picuris Pueblo for land on which an industrial mica mine is sited. The land, sacred to the Picuris People because of its micaceous clay deposits, was sold by the US government during the 1950s under the auspices of the federal 1872 Mining



Right, Picuris protest of the mine in 2002; in the foreground is micaceous pottery [S. Knox] Above, the mine in 1999 [Lighthawk]

Law. Maintaining that it never extinguished its title to the land, the Pueblo is asking a federal court for the return of the land as well as monetary damages.

By the summer of 2004, Oglebay Norton, the mine

operator since 1998, was in Chapter 11 bankruptcy, litigating the title claim, and facing opposition from the Pueblo as well as neighboring communities. **Oglebay Norton shut down the mine and its associated mill in Velarde on September 1.** The Pueblo is currently pursuing settlement negotiations with Oglebay Norton.



The aboriginal title claim continues against the previous mine operator, Tennessee-based Franklin Minerals. On March 11, 2005, the U.S. District Court heard oral arguments on Franklin Mineral's Motion to Dismiss Picuris Pueblo's claim against the mining company. Franklin Minerals argued that the United States has to be a party to this action because the case revolves around mining patents and aboriginal claims to land. Franklin also argued that if the Picuris were successful in its claim, it could question the validity of all mining patents under the 1872 Mining Act. Franklin asked District Court Judge Robert Brack to dismiss the Picuris' lawsuit.

Richard Hughes, our co-counsel from the firm of Rothstein, Donatelli, Hughes, Dahlstrom & Schoenburg, argued that predecessors in title, such as the U.S. government, are never proper parties in a land claim issue. He asserted that if this were the case, then land claim cases in the United States would have to include claims against Lord Baltimore, monarchs of England, or ancient Spanish rulers.

LAST MINUTE UPDATE: On March 31, we learned that Judge Brack **threw out Franklin's Motion to Dismiss**. With this victory under our belts, we will proceed to court with the title claim.

VALLE VIDAL PROCESS BEGINS

The U.S. Forest Service is seeking to amend the Forest Plan for the Carson National Forest, in order to determine future land use for the Valle Vidal, a unit of the Carson National Forest near the Colorado border. The Valle, which is a winter home to New Mexico's largest elk herd and a summer home to 3,000 Boy Scouts from Philmont Scout Ranch, is adjacent to Ted Turner's Vermejo Park Ranch, where El Paso Corp. has been drilling for several years.

The Law Center is a member of the Coalition for the Valle Vidal, a group knit together from concerned individuals, conservation and sportsmen's groups, businesses, and local governments and chambers of commerce. Since 2003, the Coalition has educated New Mexicans about the impacts that gas drilling will have on the Valle, including habitat fragmentation, air and water pollution, damage from roads and wellpads, traffic and compressor noise.





CROWNPOINT URANIUM CASE MOVES FORWARD

After more than eight years, the Nuclear Regulatory Commission (NRC) has given the green light to Church Rock Section 8, HRI's first proposed uranium mine for the Crownpoint-Church Rock region. Four years ago, the Law Center argued that the license should be invalidated because its reclamation plan was inadequate, as was the company's proposed surety bond. We cannot appeal this decision until Phase II of litigation is completed, and HRI cannot begin mining until it acquires an "aquifer exemption" that affirms that the area to be contaminated will not be used for drinking water. Our computer modeling shows that there is a high likelihood that contamination will migrate towards underground sources of drinking water, however.

We have begun Phase II of litigation, in which we will try to invalidate the licenses for the remaining three proposed mines on the grounds that the mines will contaminate air and groundwater. We anticipate that this phase of the case will take between 12 and 18 months. If the NRC agrees with us, and revokes HRI's licenses, we will likely appeal the license for Section 8. If the NRC rules against us, as we anticipate, we will likely appeal the entire project in federal court.

In addition to our work in the NRC proceeding, we are working with our clients to pass legislation on the Navajo Nation that would ban traditional uranium mining techniques, and place a moratorium on in situ leach mining. We are also heading to court to defend the health-based uranium groundwater standard adopted by the state of New Mexico in 2004.

Still, it is no surprise that the Coalition has been labelled "obstructionist" by drilling advocates. Here is the Coalition's rebuttal:

Already 88% of natural gas reserves occurring on federal lands in the Rocky Mountain West are available for leasing and development.

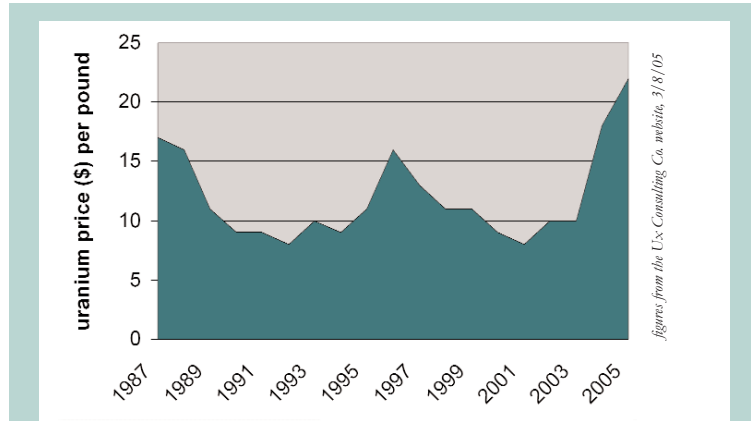
Of the 2.6 million acres in the Raton Basin, we are working to protect 40,000 acres of land that was given to the American People because of its spectacular beauty and critical habitat. The Valle hosts more than 100 species of animals, including the endangered Rio Grande cutthroat trout, and is ranked as one of the best horseback riding and camping sites in the country.

Using figures provided by the Forest Service, experts at the Oil and Gas Accountability Project estimate that the Valle Vidal would yield between 11 and 36 hours of the national gas supply -- hardly enough to make a dent in our foreign energy dependence.

Drilling advocates point to Vermejo Park as a model of environmentally-sensitive drilling, but this claim has not been scientifically or otherwise independently substantiated. The Coalition concedes that conditions may be better at Vermejo Park than on public lands, but notes that the landowner is a billionaire who has the legal muscle to enact strict covenants and full-time staff to monitor and enforce conditions.

This winter, the Forest Service has held public "open houses" across northern New Mexico, as it prepares for the scoping process. During the scoping process, the Forest Service will solicit comments about what the public wants to see in the Valle Vidal in the future. Scoping should last through the summer of 2005, and then the Forest Service will begin the studies needed for an environmental impact statement.

The Law Center encourages its members to provide comments to the Forest Service during this process. For more information, see the Coalition's website at www.vallevidal.org.



Our work on this case is more urgent - and difficult - than ever because the price of uranium has more than doubled in the past two years to nearly \$22/lb. HRI has stated that uranium must fetch a minimum price of \$17/lb. in order to mine. For the last ten years, the price had not met that threshold; now, however, mining would be a profitable venture.

To review the timeline: HRI applied for its licenses in 1988. The NRC granted the company licenses for four mines in 1997. In 1998, our clients were granted "intervenor status," and allowed to participate in the proceeding. In 2001, we completed litigation of Section 8; the Hearing Officer issued his decision in 2004. Our appeal was denied in 2005. We are now in Phase II of litigation, regarding the licenses for the remaining three mines.

A DIFFERENT PERSPECTIVE ON THE PASEO DEL NORTE EXPANSION

by Roderick Ventura, Staff Attorney

In February, Dharma Master Hsin Tao, a Taiwanese Buddhist master and the founder of the Museum of World Religions visited Las Imagines Archeological District on the west side of Albuquerque as a guest of SAGE Council, one of the Law Center's clients. The Master came to honor and bless the area. We walked with the Master as he hiked up the mesa. We stood at the edge of the mesa, looking at the storm coming in.



This area, the Las Imagines Archeological District, is a volcanic escarpment stretching 17 miles along Albuquerque's West Mesa escarpment. It contains a gallery of an estimated 25,000 prehistoric Indian and historic Hispanic petroglyphs. Early Pueblo Indian residents began using this area for traditional and cultural purposes between A.D. 1300 and A.D. 1650, which included the carving of petroglyphs into the volcanic rock. The place remains spiritually, traditionally, and culturally significant to many Native Americans today.

We drove with the visitors to Las Imagines. "This is America's sacred place," said one of the Buddhists on the bus. We laughed because we were passing a golf course. But we weren't sure he was joking.



Three months ago, the City of Albuquerque won a bond election which would allow \$8.7 million in bond money for the extension of Paseo del Norte through Las Imagines Archeological District. The bond question on the ballot asked for \$52 million of bonds for the improvement of Albuquerque streets. It did not specifically mention extending Paseo del Norte through Las Imagines Archeological District. On election night, Mayor Martin J. Chavez said that "barring lawyers," construction will begin through this area in early 2005.

Two weeks ago, on February 17, 2005, the New Mexico Environmental Law Center filed a lawsuit in New Mexico District Court on behalf of SAGE Council, the Sierra Club, the New Mexico Archeological Council, and seven other plaintiffs

requesting that the City of Albuquerque stop all planning, funding, and further construction of Paseo del Norte through Las Imagines Archeological District.

The Master was told that this was a sacred place, and he lay flat on the ground. He said he was feeling its energy. If it were anyone else, it would have seemed funny. But for him, it just seemed to work. The fact that he was a Buddhist, and Taiwanese, and came to honor this place, was not lost on any of us.

Nineteen years ago, Las Imagines was placed on the state register of cultural properties. Three years later, the New Mexico legislature passed a law making it illegal to "use" a cultural property such as Las Imagines in the way the City wants to use it for the extension of this road. This simple premise is the basis of the lawsuit.



As of this writing, we have yet to hear the City's response to our lawsuit, we have yet to face a judge, and we have yet to have a decision. All these things will play out in time.

And over time, the City of Albuquerque continued to grow. As one stands on top of the mesa in Las Imagines,

one can almost literally look straight down and see the city which has grown towards its boundaries. It may have been seven hundred or so years ago that Pueblo Indians began gathering here and marking the petroglyphs we still see today, but the City of Albuquerque wants to go through here NOW.

Looking at the petroglyphs and the volcanic rock and even watching a Buddhist master move among them, it is easy to imagine the ancient significance of this place by its proximity and location to the mountains, the river, the volcanoes. But the here and now is also what gets lost in debate over Paseo

del Norte. Today, the cultural significance of the site remains important. Today, Native Americans continue to use this site, and not just individual petroglyphs at the site, in ceremonial ways. Today local residents use this protected area as a place for recreation. Today archaeologist continue to find new knowledge about the area. Today, Las Imagines Archeological District remains on the State Register of Cultural Properties.

But what is foremost in our mind is the Mayor declaring that "construction will begin in early 2005." Two weeks ago, we filed suit against the City to stop construction. And now we stand at the edge of the mesa looking at the storm coming in.

Top: Laurie Weabkee of SAGE Council discusses the threat with Hsin Tao and his associates. Middle: Hsin Tao reflects on the significance of the site. Bottom: Growth about the Petroglyph National Monument. Photo credits: Roderick Ventura and Sarah Piltch.

WELCOMES & FAREWELLS

How does the Law Center test the mettle of a brand new Staff Attorney? By sending her to the State Capitol during the legislative session on her very first day.



Perhaps it was her two years of experience with the First Judicial District Attorney's office in Santa Fe that girded her for tough situations, but Sarah Piltch, our new attorney, seemed to thrive on the action. Which bodes well for our clients.

A Los Alamos native, Sarah grew up hiking, skiing and camping in New Mexico, and is very familiar with many of the complex environmental and environmental justice issues on which the Law Center works. "A desire to work for social justice motivated me to become a lawyer. Seeing what happens at the Legislature has given me a first-hand glimpse of how environmental injustice is perpetrated against communities that don't have the resources of large corporations to

influence what happens," says Sarah. "I'm happy to be working for a firm that tries to level that playing field."

She attended Grinnell College in Grinnell, Iowa and graduated with a degree in philosophy in 1997. She received her law degree from the University of New Mexico Law School in 2000, and then moved to Berkeley, CA, where she worked for non-profit organizations. She returned to New Mexico in 2002, and began working at the Law Center in February. Welcome, Sarah!



The Law Center would like to express its heartfelt gratitude to two exceptional individuals who recently left our Board of Directors: Michael Lilley of Las Cruces, who served with us since 1995, and Michael Guerrero of Albuquerque, who was a member of the Board since 2002. Both men provided invaluable insight, inspired us with their passion for justice, and improved our lives with their senses of humor. We wish both the best of luck in their future endeavors!



NEW MEXICO ENVIRONMENT DEPARTMENT ENVIRONMENTAL JUSTICE POLICY COMMITTEE

In August, 2005, Executive Director Douglas Meiklejohn and Law Center Board member Pablo Padilla, Jr. were asked to serve with Richard Moore of the Southwest Network for Economic and Environmental Justice (SNEEJ) as the three environmental justice advocates on the New Mexico Environment Department's *Environmental Justice Policy Committee*. In addition to these voices, the Panel also includes three representatives for industry (in this case, PNM, the NM Municipal League, and a lobbyist for the solid waste and other industries), and the Deputy Secretary of the Department, Derrith Watchman-Moore.

In 2004, NMED held a series of listening sessions across New Mexico to solicit feedback on the State's environmental justice policies. Using the input from these meetings, as well as personal experience, Doug, Pablo and Richard are working to improve NMED's policies so as to diminish the impacts of polluting facilities on minority and low-income communities.

MISSION

The New Mexico Environmental Law Center is a non-profit, public interest law firm that provides free and low-cost legal services on environmental matters throughout New Mexico. The mission of the Law Center is to protect New Mexico's environment and communities. Founded in 1987, the Law Center works with clients -- often individuals, neighborhood associations, environmental organizations, Tribes and Pueblos -- seeking to protect the environment. The work of the Law Center is made possible by tax-deductible contributions from individuals, businesses, foundations and limited earned income.

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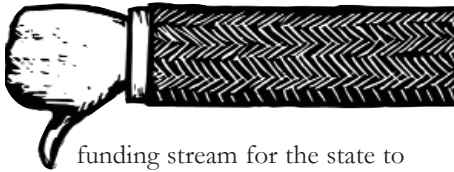
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tax-deductible. See our website or call the office for details.

LEGISLATIVE REVIEW,

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funding stream for the state to acquire water rights to help comply with the Endangered Species Act and meet our interstate stream compact delivery obligations, and a \$5 million 2005 Conservation Funding package that will purchase land for conservation, and develop conservation easements under the federal Forest Legacy Program. A couple of clean energy bills supported by the Governor also passed.

The Law Center had five staff members lobbying during the session and countless hours were spent working to kill the worst bills and trying to pass a couple of good ones. A more complete list and analysis of bills good and bad can be found on our website at www.nmenvirolaw.org/news.



Thanks to our members and supporters!

The Law Center relies upon the generosity of individuals and foundations to ensure that we can continue our work to protect the environment and communities of New Mexico. The foundations that support the Law Center, such as the IOLTA Fund, can be found in the html version of the newsletter.

Find out more about our business donor program at www.nmenvirolaw.org/business. If you would like more information, or to become a business donor, please contact Earl James or Shelbie Knox at 989-9022. In 2005, contributions have been made in memory of:

Harris Arthur
Joseph J. Dykton
Dr. Frances H. Harwood

Susan Hertel
Donald and Betty Meiklejohn

WISH LIST

1. **Housing for our interns.** This summer, we have three fantastic interns coming from Columbia School of Law in New York City. We are seeking 10 weeks of free or low-cost housing in Santa Fe, starting in May, for two women and one man.
2. **Photography!** As you may notice reading our newsletter, we recycle a lot of photographs...because we don't have many good ones. We are seeking a photographer who would be interested in donating his or her time to photograph the places we work and the people with whom we work; please call Shelbie or Earl if you can help!

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*Top: Rod Ventura with
visiting Buddhist master;
the Roundhouse; trash
truck in the South Valley.*